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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.156 OF 1995

Shipping Corporation of India Plaintiffs
versus
Capt.Manoj M.Ghose Defendant

Mr.Snehal Shah a/w Mr.Uttam i/by Mulla & Mulla & C.B.&C for for plaintiffs.

CORAM : A.M.KHANWILKAR, J.

DATE : 13th August 2007

PC :

1. This suit is listed under the caption "undefended suit" in terms of order dated 29th March 2000. None appears for the defendant though served. No written statement has been filed on behalf of the defendant. Accordingly, I proceed to pass a decree in exercise of powers under Order VIII, Rule 10 of the Code of Civil Procedure, as I am of the view that the plaintiff has substantiated the suit claim against the defendant on the basis of evidence produced before the Court.

2. In substance, the case of the plaintiff is

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that the defendant was engaged by the plaintiff on contract basis as an Additional Master between 28th April 1990 till 16th July 1993. During the said period, while on ship on duty, the defendant was permitted to withdraw amounts for the designated items. The defendant appears to have withdrawn amounts from time to time. At the end of the accounting period it was found that the defendant had withdrawn the amounts in excess unauthorisedly to the extent of around Rs.5.00 lakh. It is on this basis the plaintiffs gave notice to the defendant to make good the over drawn amount. The defendant did not repay the said amount. As the defendant did not repay the said amount nor offered proper explanation for his act of commission and omission, the plaintiffs proceeded with departmental action against the defendant. In the departmental inquiry the charges in particular regarding over drawn amount against the defendant has been established. The defendant has been found guilty in the said inquiry and it was decided to institute a suit for recovery of the over drawn amounts from the defendant. Accordingly, present suit has been filed for recovery of principal sum of Rs.5,17,092/- along with interest thereon @ 21% p.a. from the date of suit till realisation.

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3. As mentioned earlier, the defendant has not appeared in spite of service nor filed any written statement. On the other hand, the plaintiffs have filed affidavit of evidence in support of their claim sworn by Mr.Kakkathukuzhy Mathai Paul dated 13th August 2007 who is incidentally the Assistant General Manager, Personnel Department of the plaintiffs. Another affidavit of Mr.Behram J. Mistry sworn on 13th August 2007, has been filed who is the Deputy Manager, Accounts Department of the plaintiffs. Besides, the plaintiffs have tendered compilation of documents. Both the witnesses are present in the Court and have offered themselves for examination. From the affidavits filed by them, the case made out by the plaintiffs is substantiated. Besides their version is supported by documentary evidence. Indeed, the plaintiffs have not filed original documents. The reason for that has been duly explained. It is stated on affidavit by Mr.Kakkathukuzhy Mathai Paul in para no.3 that the original documents-xerox copies whereof are included in the compilation, have been misplaced during shifting of the office from third floor to registered office on the sixth floor of the building.

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However, as the plaintiffs were in possession of xerox copies of the original documents, the same have been placed on record. In my opinion, the plaintiffs ought to be permitted to rely upon the xerox copies of the relevant documents as the same is coming from the proper source and sufficient cause has been made out. Besides, the plaintiffs have produced original books of accounts which is maintained in the regular course of business. The relevant extract from the books of accounts is placed on record at page nos.44 to 46 of the compilation of documents. From the entries noted therein it is obvious that the defendant withdrew amounts on different dates. However, the plaintiffs have been able to establish excess unauthorised withdrawal of the amounts only to the extent of Rs.4,96,664=46 Ps.. The original books of accounts be returned to the plaintiffs as the same has been perused and the xerox copies thereof produced by the plaintiffs attested to be true copies, are found to be correct.

4. After having perused the affidavit and the documents on record I am inclined to accept the claim of the plaintiffs atleast to the extent of Rs.4,96,664=46 Ps.. Insofar as claim of interest

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@ 21% p.a. is concerned, that cannot be accepted. For, it is not an agreed rate of interest. Instead, I am inclined to grant interest to the plaintiffs at the rate of 6% p.a. which will be just and reasonable. There is nothing on record which militates against the claim of the plaintiffs. The defendant has not appeared before this Court in spite of service nor filed written statement obviously because he has no plausible explanation to offer. Whatever explanation was offered by him in the departmental inquiry, has been considered and rejected. Suffice it to observe that the material on record supports the case of the plaintiffs and there is no reason to doubt the correctness of that claim. As a result, in exercise of powers under Order VIII, Rule 10 of the CPC, I proceed to decree the suit against the defendant in the following terms.

5. ORDER :-

(a) The defendant to be decreed and ordered to pay the plaintiffs a sum of Rs.4,96,664-46 Ps. (Rs.Four lakh ninety six thousand six hundred sixty four and Paise forty six only) together with interest at the rate of 6% p.a. from the date of institution of the suit till its realisation;

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(b) The suit is decreed with costs;

(c) Decree be drawn up on the above terms.

(A.M.KHANWILKAR, J.)